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Coalition Of Automobile Retailers, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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NEW JERSEY COALITION OF :
AUTOMOTIVE RETAILERS, : Civil Action No. 3:18-cv-14563
INC., a non-profit New Jersey : (BRM)(TJB)
Corporation, :
: Plaintiff, :
: :
v. :
: :
MAZDA MOTOR OF AMERICA, :
INC., :
: Defendant. :
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**DECLARATION OF SHELLY
IRWIN LOCASCIO IN
OPPOSITION TO MAZDA
MOTOR OF AMERICA, INC.'S
MOTION TO DISMISS**

I, SHELLY IRWIN LOCASCIO, of full age, hereby declare as follows:

1. I am the president and owner of SIL, LLC d/b/a Irwin Mazda (“Irwin”). I make this Declaration in opposition to the motion to dismiss filed by defendant Mazda Motor of America, Inc. (“Mazda”). I have personal knowledge of the facts stated herein.

2. Irwin is a Mazda dealership located at 4000 U.S. 9, Freehold, New Jersey 07728. I was awarded the Irwin franchise and have now owned the Irwin franchise for fifteen (15) years.

3. Irwin was a member of the New Jersey Coalition of Automobile Retailers, Inc. (“NJ CAR”) at the time I purchased the Irwin franchise, and has since remained a member of NJ CAR.

4. On or about May 29, 2018, I received an email from Mazda advising Irwin and all other Mazda dealers that Mazda would be implementing the Mazda Brand Experience Program 2.0 (“MBEP”) effective July 3, 2018.

5. Irwin is presently designated by Mazda as an Exclusive Showroom dealer. Irwin’s facility is not exclusive to Mazda, but rather Irwin also sells vehicles manufactured by Lincoln out of its facility. Irwin’s facility does have an exclusive Mazda showroom, but it does not incorporate all Mazda required image elements. As an Exclusive Showroom dealer, Irwin only qualifies for 1.0% of the 4.5% brand commitment element discount or bonus of the MBEP.

6. As a result, Irwin has already lost out on thousands of dollars in discount or bonus payments and on the opportunity to compete for sales with qualifying dealers by lowering prices based on receipt of those discounts or bonuses.

7. In order to qualify for a greater portion of the 4.5% brand commitment element discount or bonus, Mazda informed Irwin that it would have to completely remove the existing facade of the facility and replace it with different materials. Mazda also informed Irwin that it would need to entirely renovate the interior of the facility to comply with its “jewel case” design.

8. All of the modifications and renovations that Mazda directed Irwin to perform in compliance with the MBEP would render extensive renovations and construction that Irwin had performed for several years after I acquired the Irwin franchise completely obsolete. From approximately 2003 to 2010, at Mazda’s instruction, Irwin constructed a separate showroom for Mazda vehicles, including a parts department and service bays, and obtained all necessary approvals from Freehold, all at a great cost.

9. Nevertheless, after the MBEP was introduced, I informed Mazda that Irwin was amenable to have the facade of its facility removed and replaced, but that it could not renovate the interior of the facility into a “jewel case” design because Freehold would not permit it. Mazda rejected Irwin’s proposal and directed Irwin to either make all of the required renovations or none of them. Left with this all-or-nothing approach, Irwin had no choice but to not undertake any additional renovations.

10. Consequently, Irwin will never be eligible for any percentage beyond 1.0% of the 4.5% brand commitment element discount or bonus under the MBEP.

11. Even if Irwin could comply with all of the MBEP requirements, Irwin would not make a reasonable return on such an investment by taking such action because it would not generate profits from additional sales and recoup discounts or bonuses in an amount nearing the amounts needed to have the renovations made during the four-year period during which these discounts or bonuses are guaranteed.

12. Mazda never provided Irwin with any justification for making the modifications necessary to qualify for any larger portion of the 4.5% brand commitment element discount or bonus.

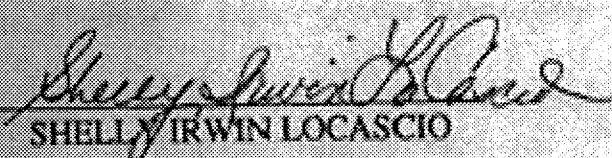
13. Mazda also emphasized to me that it believed that the implementation of the MBEP placed Irwin at a competitive disadvantage with other Mazda dealers in New Jersey given the fact that Irwin is only an Exclusive Showroom dealership whereas other Mazda dealers are Retail Evolution dealers that qualify for the full 4.5% brand commitment element discount or bonus.

14. Shortly after Mazda introduced the MBEP, I contacted James Appleton, the President of NJ CAR, and informed him of the upcoming implementation of the MBEP.

15. I also attended a meeting with Mr. Appleton and other Mazda dealers where I voiced my concern that the MBEП violated Irwin's rights under the New Jersey Franchise Practices Act ("FPA") and would significantly impact its business and hamper its ability to fairly compete.

16. The implementation of the MBEП not only is harmful to Irwin, but more significantly, is harmful to New Jersey consumers. Irwin is forced to sell Mazda vehicles at higher prices to customers in and in the vicinity of Freehold to compensate for the lack of discounts or bonuses received from Mazda. Those customers are then left with the option of spending more to purchase Mazda vehicles from Irwin or spending more to travel significantly further distances to purchase Mazda vehicles at other locations. Moreover, if Irwin or other Mazda dealers are left unable to compete and are forced to shut down, customers will be left with fewer options to purchase Mazda vehicles, have their vehicles serviced and to address any safety recalls.

Pursuant to 28 U.S.C. § 1746, I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I may be subject to punishment.



SHELLY IRWIN LOCASCIO

Dated: December 3, 2018